

Gregory M. Garrison [SBN 165215]
GARRISON & McINNIS, L.L.P.
2650 Camino del Rio North, Suite 108
San Diego, California 92108

Telephone: (619) 299-4877
Facsimile: (619) 299-4787
E-Mail: ggarrison@gm-lawyers.com

Attorneys for Plaintiff, GREGORY PIERRO

FILED

08 JUN 25 PM 2:34

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

GREGORY PIERRO, an individual,

Plaintiff,

v.

JOSHUA YOUNG, an individual,
JOHN CLARK, an individual, and
DOES 1 through 20, inclusive,

Defendants.

Case No. **'08 CV 1136 J WMc**

**COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL**

- 1) **Violation of Civil Rights
(42 U.S.C. § 1983)**
- 2) **Supervisory Liability for
Violation of Civil Rights
(42 U.S.C. § 1983)**

JURISDICTION

1. This action is brought pursuant to 42 U.S.C. Sections 1983, et seq. and the Fourth and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded on 28 U.S.C. Section 1331 and 1343 and the aforementioned statutory and Constitutional provisions.

PARTIES

2. Plaintiff GREGORY PIERRO ("PLAINTIFF") is and was at all material times mentioned herein residing in the County of San Diego, State of California.

///

///

1 3. PLAINTIFF is informed and thereon alleges that at all times relevant
2 hereto, defendants JOSHUA YOUNG ("YOUNG") and JOHN CLARK ("CLARK")
3 were residents of the County of San Diego, State of California, and were working as
4 police officers for the City of Oceanside, California.

5 4. The City of Oceanside, California is a municipality and public entity under
6 the laws of the State of California and is the employer of defendants YOUNG and
7 CLARK. The individual defendants, and each of them, acted under color of law with
8 all actions and inactions described herein.

9 5. At all times mentioned herein defendants DOES 1 through 20 (hereinafter
10 "DEFENDANTS") were employees of the City of Oceanside, California and in doing
11 the acts hereinafter described acted under color of law with all actions and inactions
12 described herein. The acts of all DEFENDANTS and each of them, were also done
13 under the color and pretense of the statutes, ordinances, regulations, customs and usages
14 of the State of California.

15 6. The true names or capacities whether individual, corporate, associate or
16 otherwise, of defendants named herein as DOES 1 through 20 are unknown to
17 PLAINTIFF, who therefore sues said defendants by said fictitious names. PLAINTIFF
18 will amend this complaint to show said defendants' true names and capacities when the
19 same have been ascertained. PLAINTIFF is informed and believes and thereon alleges,
20 that all defendants sued herein as DOES are in some manner responsible for the acts and
21 injuries alleged herein.

22 7. PLAINTIFF is informed and believes and therefore alleges that at all times
23 mentioned herein each of the defendants was the agent, servant and/or employee of each
24 of the remaining defendants and was, in doing the acts herein alleged, acting within the
25 course and scope of this agency and/or employment and with the permission, consent
26 and authority of their co-defendants and each of them, and each is responsible in some
27 manner for the occurrences hereinafter alleged; and that PLAINTIFF's injuries were
28 legally caused by the actions of each.

GENERAL ALLEGATIONS:

8. On the evening of Thursday June 29, 2006, Robert Pierro was driving a Cadillac Escalade (the "VEHICLE") in Oceanside, California near Carlsbad Boulevard. PLAINTIFF, Robert Pierro's brother, was riding in the passenger seat.

9. At approximately 11:30 p.m a police vehicle driven by Oceanside, California police officer YOUNG stopped and detained Robert Pierro's VEHICLE. YOUNG approached the VEHICLE from the driver side and requested Robert Pierro's drivers license and registration. Thereafter, YOUNG asked Robert Pierro to step out of the VEHICLE and YOUNG administered a field sobriety test. PLAINTIFF remained in the passenger seat of the VEHICLE.

10. As YOUNG administered the field sobriety test, another Oceanside police vehicle arrived on the scene for backup. This vehicle was driven by CLARK, another Officer from the Oceanside, California Police Department.

11. After administering the field sobriety test, YOUNG arrested Robert Pierro on suspicion of driving under the influence of alcohol. Thereafter, Robert Pierro was handcuffed and transported by CLARK to his vehicle. Robert Pierro never complained of his arrest, argued with or threatened YOUNG or CLARK.

12. After YOUNG told PLAINTIFF that his brother was under arrest for "DUI", PLAINTIFF began to plead with the officers not to arrest his brother.

13. As CLARK was escorting Robert Pierro to his patrol vehicle, YOUNG remained at the passenger side window talking with PLAINTIFF who continued to plead with YOUNG to release his brother.

14. PLAINTIFF then attempted to exit the VEHICLE by opening the passenger door. YOUNG ordered PLAINTIFF to remain in the VEHICLE and placed his hands upon the door. PLAINTIFF complied. After being told to remain in the VEHICLE, PLAINTIFF kept his hands visibly placed upon the dashboard.

///

///

1 15. After YOUNG noticed that CLARK had secured Robert Pierro in his patrol
2 vehicle and was returning, YOUNG ordered PLAINTIFF to exit the VEHICLE.
3 PLAINTIFF complied by opening the passenger side door and stepping out of the
4 VEHICLE. As PLAINTIFF stepped out onto the sidewalk, he raised his hands above
5 his head.

6 16. Almost immediately after stepping onto the sidewalk, as ordered by officer
7 YOUNG, officer CLARK charged PLAINTIFF from behind and jumped on him.
8 YOUNG punched PLAINTIFF in the back of the head, grabbed PLAINTIFF and tackled
9 him. CLARK and YOUNG then repeatedly punched and kicked PLAINTIFF, striking
10 him in the head repeatedly with their fists and feet. PLAINTIFF lay helpless on the
11 sidewalk while YOUNG and CLARK attacked him. PLAINTIFF suffered multiple
12 lacerations and cuts which bled profusely from wounds suffered during the attack.
13 PLAINTIFF was emotionally traumatized and humiliated as a result of the beating.
14 PLAINTIFF was arrested and charged with violation of California Penal Code Section
15 148(a)(1), resisting arrest. Unbeknownst to CLARK and YOUNG, the entire episode
16 described above was recorded on video tape by a security camera and will be presented
17 at trial.

18 17. On January 31, 2007, PLAINTIFF was acquitted of violating P.C. Section
19 148(a)(1).

20 **FIRST CAUSE OF ACTION**

21 **[42 U.S.C. § 1983 Civil Rights Violations]**

22 18. PLAINTIFF hereby re-alleges paragraphs 1 through 17, inclusive, and
23 incorporates them herein by said reference as though set forth in full.

24 19. The acts alleged above, particularly the acts by defendants YOUNG and
25 CLARK of attacking and beating an innocent, unarmed man multiple times without
26 justification or necessity, constituted an excessive and unreasonable use of force and
27 thus an unlawful seizure, in violation of PLAINTIFF'S rights guaranteed by the United
28 States Constitution, particularly the Fourth Amendment thereto. PLAINTIFF is

1 therefore entitled to damages pursuant to Title 42 U.S.C. Section 1983, et seq.

2 20. Further, by the acts alleged above, defendants YOUNG and CLARK
3 unconstitutionally retaliated against PLAINTIFF because he questioned police conduct.
4 YOUNG and CLARK'S retaliatory attack and beating of PLAINTIFF violated
5 PLAINTIFF'S rights guaranteed by the United States Constitution, particularly the First
6 Amendment thereto. PLAINTIFF is therefore entitled to damages pursuant to Title 42
7 U.S.C. Section 1983, et seq.

8 21. As a result of this attack as described above, PLAINTIFF suffered injuries
9 requiring medical care. PLAINTIFF has also suffered, and will continue to suffer, pain,
10 humiliation, embarrassment and severe emotional distress, lost earnings and lost
11 opportunity all to his damage in an amount to be proven at trial.

12 22. In committing the acts alleged above, defendants YOUNG and CLARK
13 acted maliciously and/or were guilty of a wanton and reckless disregard for the rights
14 and safety of PLAINTIFF, and by reason thereof, PLAINTIFF demands exemplary and
15 punitive damages in an amount to be proven at trial.

16 **SECOND CAUSE OF ACTION**

17 **SUPERVISORY LIABILITY FOR VIOLATION OF**
18 **FEDERAL CIVIL RIGHTS**
[42 U.S.C. § 1983]

19 23. PLAINTIFF hereby re-alleges paragraphs 1 through 22, inclusive, and
20 incorporates them herein by said reference as though set forth in full.

21 24. DOE'S 1 - 20's action and inactions, as described herein, evince DOE'S 1 -
22 20's failure to properly supervise and train YOUNG, CLARK and other subordinate
23 officers, and that this failure was deliberately indifferent to the probable consequences
24 or constituted and implicit authorization of such consequences. At all times relevant
25 herein, DOE'S 1-20 had notice of YOUNG and CLARK'S propensity to use excessive
26 force against members of the public, yet allowed YOUNG and CLARK to continue
27 engaging in such unlawful behavior with impunity. YOUNG and CLARK'S use of
28 excessive force against PLAINTIFF was the natural and direct consequence of DOE'S

1-20's actions and inactions, as described herein.

25. As a direct and proximate result of DOE'S 1-20's inexcusable deliberate indifference and implicit authorization of YOUNG and CLARK'S use of excessive force, PLAINTIFF has suffered injuries requiring medical care. PLAINTIFF has also suffered, and will continue to suffer, pain, humiliation, embarrassment and severe emotional distress, lost earnings and lost opportunity all to his damage in an amount to be proven at trial.

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS, and each of them, as follows:

FIRST CAUSE OF ACTION

1. For general and compensatory damages against defendants and each of them in an amount to be proven at trial.
2. For exemplary and punitive damages against defendants and each of them in an amount to be proven at trial.
3. For costs of suit herein, including reasonable attorney's fees; and
4. For such other and further relief as the Court deems proper.

SECOND CAUSE OF ACTION

1. For general and compensatory damages against defendants and each of them in an amount to be proven at trial.
2. For costs of suit herein, including reasonable attorney's fees; and
3. For such other and further relief as the Court deems proper.

Dated: June 25, 2008

GARRISON & McINNIS, L.L.P.

By:


 Gregory M. Garrison, Attorneys
 for Plaintiff GREGORY PIERRO

DEMAND FOR JURY

Plaintiff GREGORY PIERRO hereby demands a jury trial in this action.

Dated: June 25, 2008

GARRISON & McINNIS, L.L.P.

By:



Gregory M. Garrison, Attorneys
for Plaintiff GREGORY PIERRO

K:\CLIENTS\Pierro\Pleading\Complaint.wpd

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

**# 152296 - TC
* * C O P Y * *
June 25, 2008
14:34:41**

Civ Fil Non-Pris
USAO #: 08CV1136
Judge.: NAPOLEON A JONES, JR
Amount.: \$350.00 CK
Check#: BC57605

Total-> \$350.00

FROM: GREGORY PIERRO
VS.
JOSHUA YOUNG ET AL.

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

GREGORY PIERRO

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Garrison & McInnis, L.L.P. Telephone: (619) 299-4877
2650 Camino del Rio North, Suite 108 San Diego California

DEFENDANTS 2-32

JOSHUA YOUNG, an individual, JOHN CLARK, an individual,
and DOES 1 through 20, inclusive,

County of Residence of First Listed Defendant San Diego

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

'08 CV 1136 J WMC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|---|---|---|
| Citizen of This State | PTF 1 DEF 1 | Incorporated or Principal Place of Business In This State | PTF 4 DEF 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	PERFECTION/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. § 1983

Brief description of cause:

Violation of Civil Rights

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

152296

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

TAC 6/25/08

CL